

Application Number 10/816,378
Amendment dated May 21, 2008
Response to Office Action mailed February 21, 2008

REMARKS

This amendment is responsive to the Office Action dated February 21, 2008. Applicant has amended claims 1, 5, 6, 25, 28-30, 34, 35, 54, 58 and 59 and cancelled claims 4, 27, 33 and 57. Applicant has also added new claims 76-78. Claims 1, 5-25, 28-30, 34-54 and 58-78 are pending.

Interview Summary

Applicant would like to thank the Examiner for discussing the Office Action via telephonic interview on April 23, 2008. The Examiner, Examiner Chu, and Applicant's representatives, Mr. Kent Sieffert and Mr. Matthew Gage, participated in the interview. During the telephonic interview, Applicant's representatives discussed amendments to Applicant's claims directed to subject matter the Examiner indicated as allowable. The Examiner and Applicant's representatives did not reach an agreement with respect to the amendments concerning the allowable subject matter.

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 4-7, 27, 33-36 and 57-60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In this amendment, Applicant has amended claims 1, 25, 30 and 54 to include all subject matter recited by respective claims 4, 27, 33 and 57 and any intervening claims on which claims 4, 27, 33 and 57 depend, of which there were none.

For example, Applicant amended claim 1 to require all the subject matter of claim 4. The method of claim 1, as amended, requires computing a system load in units of time by comparing the transmission time to a constant lower limit and selectively setting the system load based on the comparison.

Applicant has also submitted new claims 76-78, which respectively recite the subject matter of claims 1, 30 and 54 and claims 7, 36 and 60, which the Examiner indicated would be allowable. Consequently, Applicant submits claims 1, 25, 30, 54 and 76-78 and the claims dependent therefrom, i.e., claims 5-24, 28, 29, 34-53 and 58-75, are in condition for allowance.

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Claim Rejection Under 35 U.S.C. § 101

In the Office Action, the Examiner rejected claims 25-29 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant has amended these claims to properly recite statutory subject matter. For example, Applicant has amended claim 25 to recite a computer-readable storage medium that stores instructions. Applicant submits that claim 25, as amended, provides structural and functional interrelationships, and therefore is directed to statutory subject matter as defined by 35 U.S.C. 101.

Applicant has also amended claims 28 and 29 in a manner similar to that of claim 25 and therefore submits that these claims are also directed to statutory subject matter as defined by 35 U.S.C. 101. Applicant has cancelled claims 26 and 27 so the rejection against these claims is moot.

Accordingly, Applicant requests withdrawal of the rejection against claims 25-29 under 35 U.S.C. 101.

Claim Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 25-29 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As described above with respect to the rejection of these same claims under 35 U.S.C. 101, Applicant has amended claims 25, 28 and 29 for purposes of clarification and in accordance with the Examiner's recommended amendments. For similar reasons as those recited above, Applicant submits that claims 25, 28 and 29 (claims 26 and 27 have been cancelled), as amended, particularly point out and distinctly claim the subject matter, as required by 35 U.S.C. 112, second paragraph.

Consequently, Applicant requests immediate withdrawal of all rejections under 35 U.S.C. 112.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1, 8-19, 21-25, 28-30, 37-48, 50-54, 61-64 and 66-75 under 35 U.S.C. 103(a) as being unpatentable over St. John (US 2002/0136200) in view of Dan et al. (US 6,047,309). However, considering that Applicant has amended

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independent claims 1, 25, 30, and 54 to include subject matter the Examiner indicated as allowable if not dependent on a rejected base claim, Applicant submits that the rejection is moot. As a result, Applicant requests withdrawal of the rejection and prompt allowance of Applicant's claims.

New Claims:

Applicant has added claims 76-78 to the pending application. The applied references fail to disclose or suggest the inventions defined by Applicant's new claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed inventions. As described above, Applicant new claims 76-78 recite limitations the Examiner indicated would be allowable if rewritten to include the subject matter of the base claims and any intervening claims. Specifically, Applicant has also submitted new claims 76-78, which respectively recite the subject matter of claims 1, 30 and 54 and claims 7, 36 and 60, which the Examiner indicated would be allowable. No new matter has been added by the new claims.

CONCLUSION


All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

May 21, 2008

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